

PATENT Attorney Docket No. 102.0001-03000 Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Gary K. Michelson, M.D.

Serial No.: 08/480,684- 09/497590

Group Art Unit: 3764

Filed: June 7, 1995

Examiner: M. Brown

For: APPARATUS FOR INSERTING

SPINAL IMPLANTS

OCT 1 6 2003

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

TECHNOLOGY CENTER R3700

Sir:

CERTIFICATE OF MAILING VIA FIRST CLASS MAIL

Date of Deposit: September 29, 2003

I hereby certify that:

1. Status Inquiry

- 2. Information Disclosure Statement Under 37 C.F.R. § 1.97(c) with Form PTO-1449 and 2 documents
- 3. Check in the amount of \$180.00
- 4. Self-addressed return postcard receipt

are being deposited with the United States Postal Service to Addressee with sufficient postage as first class mail under 37 C.F.R. § 1.8 on the date indicated above and are addressed to:

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Date: September 29, 2003

Sandra L. Blackmon

1557 Lake O'Pines Street, NE

Hartville, Ohio 44632 Telephone: 330-877-0700 Facsimile: 330-877-2030



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#2

RECEIVED OCT 1 6 2003

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

TECHNOLOGY CENTER R3700

Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(c)

Further to the Information Disclosure Statement filed January 24, 2002 and pursuant to 37 C.F.R. §§ 1.56 and 1.97(c), applicant brings to the attention of the Examiner the documents listed on the attached PTO 1449. This Information Disclosure Statement is being filed after the events recited in Section 1.97(b) but, to the undersigned's knowledge, before the mailing date of either a Final Action or a Notice of Allowance. Under the provisions of 37 C.F.R. § 1.97(c), this Information Disclosure Statement is accompanied by a fee of \$180.00 as specified by Section 1.17(p).

Copies of the listed documents are attached.

Applicant respectfully requests that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

Further to the Information Disclosure Statement of January 24, 2002, Applicant brings to the Examiner's attention that the previously identified litigation matter in the

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United States District Court for the Western District of Tennessee, Western Division, Case No. 99-2656GV, referred to as Litigation 3 ("Lit. 3"), has settled with the defendants retracting their assertions of invalidity and inequitable conduct. Discovery documents relating to the aforementioned litigation is available upon request.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claim in the application and applicant determines that the cited documents do not constitute "prior art" under United States law, applicant reserves the right to present to the office the relevant facts and law regarding the appropriate status of such documents.

Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-1068.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: September 29, 2003

Thomas H. Martin Registration No. 34,383

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Substitute for FORM PTO-1449 OCT 0 6 2003			Attorney Docket Number 102.0001-03000		Customer No. 22882		
INFORMATION DISCLOSURE CITATION IN AN APPLICATION (Use several sheets if necessary)			Applicant		Application N	Number	
			Gary K. Michelson, M.D.		08/480,684		
			Filing Date		Group Art Unit Examiner		
		June 7, 1995		3764 M. Brown			
	Sheet <u>1</u> of <u>1</u>		_ 				
		U.S. PATÆNT	DOCUMENTS	-			
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European Search Report as issued in European Patent Application No. 01 11 7867 on August 20, 2003.							
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